

**EXPLANATORY MEMORANDUM TO THE RADIOACTIVE
CONTAMINATED LAND (MODIFICATION OF ENACTMENTS) (WALES)
(AMENDMENT) (EU EXIT) REGULATIONS 2019**

This Explanatory Memorandum has been prepared by the Department for Environment, Sustainability & Natural Resources and is laid before the National Assembly for Wales in conjunction with the above EU Exit subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019.

Lesley Griffiths AM
Minister for Environment, Energy and Rural Affairs

18 December 2018

1. Description

The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019 correct minor, technical deficiencies within The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 as amended. The purpose of the corrections is to ensure that the legislative framework governing radioactive contaminated land is operable post EU-exit.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

This instrument is being made using the power conferred by section 11 of and paragraph 1(1) of Schedule 2 to, the European Union (Withdrawal) Act 2018 (“the 2018 Act”).

As set out in the Ministerial statement in Annex 2 of this Explanatory Memorandum it is proposed that the instrument be subject to negative procedure. The instrument makes minor and technical changes and as such should be subject to annulment.

3. Legislative Background

This instrument is being made using the power conferred by section 11 and paragraph 1(1) of Schedule 2 to the 2018 Act in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the UK from the EU.

This instrument is being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (“the 2006 Regulations”) transposed parts of the Basic Safety Standards Directive 2013/59/Euratom (“the Directive”) relating to radioactive contaminated land. These regulations introduced a system for identifying and remediating contaminated land that exposes people/members of the public to radioactivity, including ionising radiation (termed “public exposures”). The 2006 Regulations make modifications to Part 2A of the Environmental Protection Act 1990 (“the 1990 Act”) which provides for a contaminated land regime. The modifications provided for by the 2006 Regulations modify Part 2A of the 1990 Act so as to provide for a radioactive contaminated land regime.

The legislation also covers radiation protection for workers and medical patients, including emergency preparedness and response.

5. Why is it being changed?

The 2006 Regulations refer to the “inspection” of land for the purpose of keeping the condition of the land under review. The definition of “inspection” in the 2006 Regulations relies on the definition of “inspection” within the Directive which, in turn, contains a cross-reference to the term “competent authority”. In the Directive, “competent authority” is defined as “an authority or system of authorities designated by Member States as having legal authority for the purposes of this Directive.” Post EU-exit, this definition will not be operable as the UK will not be a Member State and a “competent authority” cannot be designated for the purposes of the Directive. The corrections substitute “competent authority” for “enforcing authority” in the new draft Statutory Instrument.

The 2006 Regulations contain further references and definitions which are derived from the Directive 2013/59/Euratom. These references will not be operable once the UK leaves the EU. Therefore, the objective is to ensure that the legislation works effectively once the UK has left the EU. Ensuring the legislation is operable is essential for the workings of the legislative framework governing the management and remediation of radioactive contaminated land.

The deficiencies which are subject to correction do not constitute policy changes – they are minor, technical amendments to ensure the legislation is operable once the UK leaves the EU.

6. Consultation

It was considered neither necessary nor appropriate to publicly consult on the draft Statutory Instrument as it does not introduce policy changes. The draft Statutory Instrument simply ensures the relevant legislation is operable post EU-exit.

7. Regulatory Impact Assessment (RIA)

No impact assessment has been produced in relation to these Regulations as no impact on the private, voluntary or public sectors is foreseen. This legislation has no impact on the statutory duties (sections 77-79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of the Government of Wales Act 2006).

Annex 1

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 77	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g. whether minor or technical changes only are intended to the EU retained law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	<p>Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.</p> <p>Welsh Ministers have committed to make the same statement</p>	A statement to explain why it is appropriate to create such a sub-delegated power.

		when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement(s)

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because the changes made are minor and technical in nature. There is no change to policy.”

2. Appropriateness statement

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Radioactive Contaminated Land (Modification of Enactments) (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate. This is the case because all the changes being made are solely in order to address inoperabilities arising from EU exit.”

3. Good reasons

The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action. These are the benefits of continuing to have functioning legislation governing the remediation of radioactive contaminated land following EU exit, and the existence of inoperabilities in this legislation if changes are not made.”

4. Equalities

4.1 The Minister for Environment, Energy and Rural Affairs has made the following statement:

“The instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister for Environment, Energy and Rural Affairs has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lesley Griffiths, Minister for Environment, Energy and Rural Affairs, have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

5. Explanations

The explanations statement has been made in paragraph 4 (Purpose and intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

Not applicable/required.

7. Legislative sub-delegation

Not applicable/required.

8. Urgency

Not applicable/required.